

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date September 15, 2004 **Division** **County Attorney**

AGENDA ITEM WORDING

Approval of resolution approving an Amended Conservation Easement to the Land Authority for two lots on Eastern Crawl Key.

ITEM BACKGROUND

In 1990 and 1991 the County granted Conservation Easements to the Land Authority to be used for Solid Waste Management Facilities, which is no longer feasible. These easements were not recorded. By the terms one has expired, and the second is deemed to have no legal validity due to non-recording.

PREVIOUS RELEVANT BOCC ACTION

See above.

CONTRACT/AGREEMENT CHANGES

STAFF RECOMMENDATIONS - Approval

TOTAL COST	BUDGETED	Yes	No
COST TO COUNTY	SOURCE OF FUNDS		
APPROVED BY:	County Attorney ■	OMB/Purchasing	Risk Management

DIVISION DIRECTOR APPROVAL:

John R. Collins 08/24/04
J. R. COLLINS

DOCUMENTATION: Included

AGENDA ITEM # _____

02

RESOLUTION NO. -2004

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA REQUESTING AMENDED
CONSERVATION EASEMENT BE ACCEPTED BY MONROE
COUNTY LAND AUTHORITY.**

WHEREAS, Grantor previously granted, on April 19, 1991, a Conservation Easement deed to Grantee, but did not record said document in the Official Records of Monroe County, Florida; and

WHEREAS, Grantor also issued to Grantee a Conservation Easement dated August 20, 1990, which was not recorded, but was delivered, and, by its terms, has expired; and

WHEREAS, Grantor and Grantee recognize that the original intended use of the property, to wit: Solid Waste Management Facilities, is no longer a feasible use of said property; and

WHEREAS, it is desired between the parties to establish a new Conservation Easement, and to have the Conservation Easement document delivered to the Grantee and be recorded in the Official Records of Monroe County; and

WHEREAS, Section 704.06, Florida Statutes, permits the creation of Conservation Easements for the purpose of retaining land or water areas of environmental significance; and

WHEREAS, the property, although previously scarified and excavated in part, does contain natural and revegetated areas which it is desired to preserve; now, therefore,

BE IT RESOLVED by the BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY that:

1. The MONROE COUNTY LAND AUTHORITY is hereby requested to accept for recordation an AMENDED CONSERVATION EASEMENT, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.
2. The AMENDED CONSERVATION EASEMENT shall operate to release from any obligations the County may have had under the Conservation Easement deed dated April 19, 1991, and establishes new obligations to protect and conserve the environment in keeping with State environmental laws and allow reasonable use of such portions of said property as may be developed for public purposes under said laws.

3. The AMENDED CONSERVATION EASEMENT shall be in the following property:

Lot 3 of Section 26 in T.65S., R.33E., and Lot 1 of Section 35 in T.65S., R.33E., known as Eastern Crawl Key, Monroe County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 15th day of September, 2004.

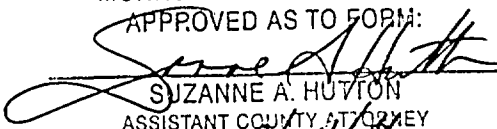
Mayor Nelson
Mayor Pro Tem Rice
Commissioner McCoy
Commissioner Neugent
Commissioner Spehar

(SEAL)
Attest: DANNY L.KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk
jresEasement.com

By _____
Mayor/Chairperson

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 8/24/04

AMENDED CONSERVATION EASEMENT

A Conservation Easement is hereby granted and conveyed on the 15th day of September, 2004, by the Board of County Commissioners of Monroe County, Florida (hereinafter referred to as "GRANTOR"), to the Monroe County Land Authority (hereinafter referred to as "GRANTEE"), in the following property:

Lot 3 of Section 26 in T.65S., R.33E., and Lot 1 of Section 35 in T.65S., R.33E., known as Eastern Crawl Key, Monroe County, Florida.

WHEREAS, Grantor previously granted, on April 19, 1991, a Conservation Easement deed to Grantee, but did not record it; and

WHEREAS, Grantor also issued to Grantee a Conservation Easement dated August 20, 1990, which was not recorded, but was delivered, and, by its terms, has expired; and

WHEREAS, Grantor and Grantee recognize that the original intended use of the property, to wit: Solid Waste Management Facilities, is no longer a feasible use of said property; and

WHEREAS, it is desired between the parties to establish a new Conservation Easement, and to have the Conservation Easement document delivered to the Grantee and recorded in the official records of Monroe County; and

WHEREAS, Section 704.06, Florida Statutes, permits the creation of Conservation Easements for the purpose of retaining land or water areas of environmental significance; and

WHEREAS, the property, although previously scarified and excavated in part, does contain natural and revegetated areas which it is desired to preserve;

NOW, THEREFORE, the Grantor, for consideration of release from any obligations it may have had under the Conservation Easement deed dated April 19, 1991, does hereby freely give, grant, and convey unto the Grantee, its successors and assigns, a Conservation Easement over the above-described parcel, consisting of the following:

1. The parcel shall be used for governmental and other public purposes.
2. Fringing mangroves and existing wetlands on the above-described property shall not be disturbed except as provided by law. This provision allows, for example, for maintenance as permissible under state statute and regulations, and permitted removal upon meeting appropriate permit conditions.
3. Environmental assessments of any area proposed to be developed for any public purpose shall be conducted prior to the proposed development and Grantor shall comply with those safeguards required by state statute or regulation for the protection and preservation of wildlife habitat, or mitigation.
4. The Grantor expressly reserves for the County of Monroe the right to continue the use of the property for all purposes not inconsistent with this Conservation Easement.
5. The Grantor agrees that this Conservation Easement shall be recorded in the official records of Monroe County.
6. In the event that a breach of these restrictions by the Grantor or by a third party comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the premises that are reasonably calculated to correct swiftly the conditions constituting such a breach. If the Grantor fails to take such corrective action, the Grantee shall at its discretion, undertake such actions as are reasonably necessary to effect such corrections, including appropriate legal

proceedings. The cost of such corrections, including the Grantee's expenses, court costs and legal fees, shall be paid by the Grantor, provided that the Grantor is determined to be responsible for the breach.

7. Any notices required in this Conservation Easement shall be sent by registered or certified mail, postage prepaid to the following addresses or such address as may be hereafter specified by notice in writing:

GRANTOR: Monroe County
c/o Office of the County Attorney
PO Box 1026
Key West, FL 33041-1026

GRANTEE: Monroe County Land Authority
Harvey Government Center
1200 Truman Avenue
Key West, FL 33040

8. In the event any provision of this grant is determined by an appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.
9. Any assignment of benefits by the Grantee or its successors must require the transferee to carry out the purposes of this Conservation Easement.
10. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Easement.
11. The obligations and responsibilities of Grantor under this Conservation Easement shall be binding on its successors and assigns.

TO HAVE AND TO HOLD this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused its hand and seal to be affixed the date and year first above written, and the Grantee has caused these presents to be signed in its name by its Director of the Monroe County Land Authority the day and year first above written.

(SEAL)
Attest: DANNY L.KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

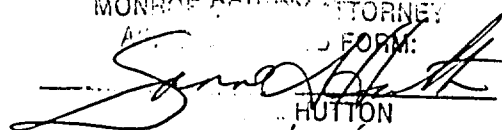
By _____
Deputy Clerk

By _____
Mayor/Chairperson

Monroe County Land Authority

By _____
David P. Rice, Chair

Jcon.easement.con.amend

MONROE COUNTY ATTORNEY
APPROVED FORM:

HUTTON
COUNTY ATTORNEY
08/24/04